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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,970	02/23/2004	Hartmut Gartner	03024	7717

7590 03/08/2006

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EXAMINER

LE, TAN

ART UNIT PAPER NUMBER

3632

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/782,970	GARTNER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tan Le	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-100 is/are pending in the application.  
 4a) Of the above claim(s) 14-99 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-13 and 100 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:  
 1. ☒ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/23/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This is the first office action for Application No. 10/782,970, Adjusting Device, filed 02/23/04. This application contains 100 claims numbered 1-100.

### ***Election/Restrictions***

2. Applicant's election of the species of Figures 1-7 and claims 1-13 and 100 in the reply filed on 11/23/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a). Accordingly, claims 14-99 are withdrawn from consideration as being directed to a non-elected species. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on 2/13/04 is acknowledged. However, one foreign patent document EP 1,222,986 submission is not in compliance with the provisions of 37 CFR 1.97. (Submission with no English translation). This reference is therefore not considered by Examiner.

### ***Specification/Abstract***

5. The abstract of the disclosure is objected to because of the use of phrases which can be implied, such as / comparison "the disclosure concerns, the disclosure defined

Art Unit: 3632

by this invention, the disclosure describes, the disclosure provides...In accordance with the invention, *the present invention relates*", which should be avoided. Correction is required. See MPEP § 608.01(b).

Note: The specification is also objected to because Applicants refer to "Figs." Such as "In the adjusting device described with respect to the FIGS." (See page 17, line 16; Page 18, line 9) but fail to specifically point out what Figure Number? Correction is required.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 and 100 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A claim using means plus function limitations without corresponding disclosure of specific structures or materials that are not well known fails to particularly point out and distinctly claim the invention. Dossel, 115 F.3d at 946-47, 42 USPQ2d at 1884-85. In the instant case the application has not disclosed (provided no support in the

Art Unit: 3632

specification) any "structure" which corresponds to the claimed means as claimed. See also on B. Braun Medical, 124 F.3d at 1424, 43 USPQ2d at 1899.

Claims (1 and 100) are also considered incomplete for omitting the necessary structural cooperative relationship between the means and the other recited elements.

Claims 1 and 100, each recites "two force-transmitting units *operatively* connected to said coupling plate". It is unclear as to what constitutes to be "operative" connected as Applicants are attempting to set forth?

#### ***Allowable Subject Matter***

7. Claims 1-13 and 100 are rejected but would be favorably considered if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6,402,111 to Stewart et al.

US 2006/0022103 to Boulard

US 6,427,959 to Kalis et al.

US 2,376,384 to Ringle et al.

US 2004/0164214 to Gartner et al.

US 6,254,046 to Biber

The above patents disclose various types of adjusting devices connecting to force transmitting elements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Tan Le', with a large, stylized loop at the end.

Tan Le  
Patent examiner  
February 17, 2006.